86-1130

Supreme Court, U.S.
FILED
DEC 8 1986
JOSEPH F. SPANIOL, JR.
CLERK

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

IN THE MATTER OF
NOLA ARLENE ALLEN,

Petitioner,

vs.

THE SUPREME COURT OF INDIANA AND
THE INDIANA SUPREME COURT
DISCIPLINARY COMMISSION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

Petitioner:

Nola Allen, Pro Se
5018 Terrace Village Lane
Tampa, Florida 33617
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100 pp

Questions Presented for Review

Petitioner raised and preserved below the question whether the recommendation of the Hearing Officer and its subsequent adoption by The Indiana Disciplinary Commission and The Indiana Supreme Court violated the due process clause of the Fourteenth Amendment to the United States Constitution on the grounds, among other: 1) The findings of the facts were not objective recitals of the record as contained in the transcript, but rather were "presented with a distinct and unmistakable adversary tone;" 2) Conclusions of law were stated as findings of facts; 3) The Hearing Officer demonstrated bias and prejudice against the Petitioner and her presentation as a witness and by and through the arguments of her counsel; 4) Without notice the proceedings were

treated as disbarment proceedings and Petitioner was punished by being disbarred for an additional period of at least five years. At no time did the Respondents file a pleading or argue the case as though it was a disbarment proceeding and Petitioner did not submit to jurisdiction of the Court for such a proceeding. Additionally, Respondents have not met their burden of proof for disbarment. The theory of the Petition and all subsequent hearings were in the nature of a Petition for Reinstatement to the practice of law; 5) Respondents are violating Petitioner's constitutional right to present her evidence fully and truthfully and to appear and testify in her own behalf; 6) Respondents are requiring the Petitioner to testify in a matter that requires she incriminate

herself and be subjected to a charge of perjury; 7) Respondents are requiring Petitioner admit she committed certain acts and/or had knowledge about the acts of others, to demonstrate remorse, rehabilitation, good character and an understanding and appreciation of the "attitude towards the standards that are imposed upon members of the Bar" and that she would conduct herself "in conformity with such standards" even though she has consistently denied complicity and/or knowledge of the acts of others; 8) Respondents denied Petitioner an opportunity to appear and argue her case before the Indiana Disciplinary Commission and The Supreme Court of Indiana; 9) Application of Rule 23, Section 4, of the Rules of the Indiana Supreme Court against the Petitioner

denies Petitioner the opportunity to be reinstated for life contrary to the equal opportunity clause of the 14th Amendment of the United States Constitution.

List of all Parties to the Proceedings

The parties to these proceedings are Respondents G. Daniel Kelley, Jr., Hearing Officer; The Indiana Supreme Court Disciplinary Commission; and The Supreme Court of Indiana.

Table of Contents

	PAGE
Questions Presented for Review	1
List of Parties to the Proceedings	4
Table of Contents	5
Table of Authorities	7
Opinions and Reports Delivered in the Supreme Court of Indiana	9
Grounds on which the Jurisdiction of the United States Supreme Court is Invoked	9
Date of Judgment to be Reviewed	9
Date of Order Representing a Rehearing	10
Statutory Provision Authorizing United States Supreme Court to Review the Judgment by Writ of Certiorari	10
Concise Constitutional Provisions Involved Statement of Case	11
State at Which Federal Constitutional Issues to be Reviewed were Raised, Manner in Which they were Raised and Ruling thereon	17

Reasons for Allowance of Writ of Certiorari 18

Appendix 34

Slip Op. 3 Second petition for Reinstatement, filed December 24, 1983. 38

Slip Op. 4 Findings of Fact and Recommendations to the Commission on the Second Petition for Reinstatement, dated February 18, 1986. 41

Slip Op. 5 Recommendation Upon Petition for Reinstatement, dated February 18, 1986. 76

Slip Op. 2 Order Denying Petition for Reinstatement, dated June 4, 1986. 36

Slip Op. 6 Motion to Reconsider and to Consider Brief Herein Filed, dated June 12, 1986. 78

Slip Op. 1 Order Denying Motion to Reconsider, dated September 9, 1986. 34

Table of Authorities

Cases	PAGE
Barton, In re 329 A2d 102 (Md)	24
Bennethum III, In the Matter of, 278 A2d, 831 (Del)	20,30
Bradley, Ex Parte, 7 Wall. (U.S.) 364	27
Bradley v. Fisher, 12 Wall. (U.S.) 335	27
Bruener, In re 34 P2d 437 (Wash)	30
Burns v. State, Civ.App. 76 SW2d 172 (Tenn)	30
Daniel, In re 173 SE2d 153 (W.Va)	19
Eddlemen, Petition of 159 P2d 387 (Wash)	24
Hiss, In re 33 NE2d 429 (Mass)	13,23
Koningsberg v. State Bar of California 353 U.S. 252	21,22,23,30
Mitchell, In re 14 SE2d 77 (W.Va)	30
Murray, In re 362 NE2d 128 (Ind)	27
Peters, In re 70 So 648 (Ala)	30
Robinson, Ex Parte, 19 Wall. (U.S.) 513	27
Ruffalo, In re 390 U.S. 554	27
Schware v. Board of Bar Examiners of New Mexico 353 U.S. 252	21,22

Seijas, Petition of 454 P2d 203 (Wash) 19

Spevack v. Klein 385 U.S. 11 29

Stephenson, In re 10 So.2d 1 (Ala) 30

Stivers, In re 292 NE2d 804 (Ind) 29

Stump, In re 14 SW2d 1094 (Ky) 30

Synder's Case 152 A 33 (Penn) 31

Thomas, In re 390 NE2d 890 (Ill) 23

U.S. v. Boyer 150 F2d 505 U.S. Court of Appeals, D.C. 24

U.S. v. Grinnel Corp. 84 U.S. 563 30

Willner v. Committee on Character and Fitness 373 U.S. 96 21

Miscellaneous

28 U.S.C. Section 1257(3) 10

Supreme Court Rules, Rule 29, Section 1 10

Indiana Supreme Court Rules, Rule 23, Section 4 3,9,16,20,21,22

7A Corpus Juris Secundum, Attorney and Client, Section 122 19

7A Corpus Juris Secundum, Attorney and Client, Section 92 27

Opinions Delivered By The Indiana Supreme Court

On the 4th day of June, 1986, the Indiana Supreme Court filed its Order Denying Petition for Reinstatement as appears in Slip Op. 2 in the Appendix attached hereto, for the reason "Petitioner... failed to meet the requirements of Admission and Discipline, Rule 23, Section 4" and on the 9th day of September, 1986, entered its Order denying Motion to Reconsider as appears in the Appendix attached hereto, Slip Op. 1 without opinion.

Grounds on Which the Jurisdiction of the United States Supreme Court is Invoked

The pertinent dates are:

June 4, 1986: Second Petition for Reinstatement to practice of law in the

State of Indiana filed by Petitioner denied by The Indiana Supreme Court.

September 9, 1986: Timely Motion to Reconsider and Consider Brief Herein Filed, denied by The Indiana Supreme Court.

December 8, 1986: Expiration of Time for filing Petition for Writ of Certiorari in this Court. Because December 7, 1986 is a Sunday, the time is extended to December 8, 1986, pursuant to Rule 29 (1).

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3). The case involves violation of the Fourteenth Amendment, Section 1 to the United States Constitution, namely:

".....nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to

any person within its jurisdiction the equal protection of the laws."

Concise Statement of Case

This case is a culmination of litigation that began in 1972. After a Recommendation of an eighteen month suspension by the Hearing Officer, Petitioner was suspended from the practice of law in the State of Indiana for two years on June 26, 1973. One of the grounds for her suspension was a finding that, having received $750.00 from a client to pay state inheritance tax, Petitioner failed to make payment and that she did not return the money to the client. The findings were made notwithstanding Petitioner's denial of any misconduct.

On December 29, 1975, more than two years after her suspension, Petitioner

moved for reinstatement to the practice of law in Indiana. After a hearing, the Hearing Officer found that Petitioner's conduct since her suspension had been "exemplary and above reproach, and that her attitude toward the misconduct for which she was disciplined was one of genuine remorse." However, he recommended that the Petitioner not be reinstated on the ground that she was guilty of misconduct for which she was suspended in 1973, that Petitioner had "testified falsely" when she denied her complicity and had therefore "committed an original act of misconduct at the evidentiary hearing held on her Petition for Reinstatement, namely perjury." The only evidence at the reinstatement hearing on the question of the initial misconduct was Petitioner's testimony.

A majority of the Disciplinary Commission and the Supreme Court of Indiana agreed, holding that "...the wrong committed by the Petitioner was not in her professing innocence of commission of the act for which she was disciplined and found to be guilty. Compare In re Hiss, (1975) 368 Mass. 447, 33 N.E. 2d 439. Rather, her wrong was that in attempting to prove her innocence she gave untrue testimony, under oath, before the very tribunal attempting to make the truth determination of her fitness to be reinstated."

Two judges dissented. They believed that "under the majority opinion, one suspended for misconduct, despite his denial of the charges, may never be reinstated without first admitting to the original guilt. Such a condition is a

proclamation of the infallibility of our system, which does not and can never exist."

Petitioner raised and preserved the question whether the recommendation of the Hearing Officer violated the due process clause of the Fourteenth Amendment on the grounds, among others, that the record was devoid of evidence to support the factual conclusion that Petitioner lied at the reinstatement hearing; and that the original adverse finding against Petitioner was res judicata and therefore not re-litigable, or, put another way, having once been punished, she could not twice be put in jeopardy by persisting in her denial of misconduct.

On the 24th day of December, 1983, Petitioner filed a Second Petition for

Reinstatement to the practice of law in Indiana as appears in Slip Op. 3 in Appendix attached thereto. After a hearing during which Petitioner presented unrefuted evidence from attorneys, associates and neighbors as to her good character and reputation, remorse, rehabilitation, and understanding of and ability to conform her behavior to the standards expected of members of the Bar, the Hearing Officer found the Petitioner had again testified falsely concerning her involvement in the manufacture, fabrication and use of corrupt and false evidence in making her defense to the original charges brought against her by the Disciplinary Commission. The finding was a result of Petitioner's statement that it was her belief all of her testimony at the original restatement was

truthful. The Hearing Officer proceeded further to treat the Reinstatement proceeding as a disbarment action and recommended that Petitioner be denied an opportunity to reapply for reinstatement for a period of at least five years as appears in Slip Op. 4 in Appendix attached hereto. Respondents presented no evidence.

Without giving Petitioner an opportunity to argue, the Disciplinary Commission as appears in Slip Op 5 in Appendix attached hereto and later the Supreme Court of Indiana as appears in Slip Op 2 in Appendix attached hereto agreed with the Hearing Officer. They found Petitioner had "failed to meet the requirements of Admission and Discipline Rule 23, Section 4, and that the commissioner's recommendation should be

approved" as appears in Slip Op. 2 in Appendix attached hereto.

State at Which Federal Constitutional Issues to be Reviewed Were Raised, Manner in Which They Were Raised and Ruling Thereon

The Petitioner filed a Motion to Reconsider which reiterated her objections to the inquiries concerning her testimony in the previous proceedings on the grounds that it violated her constitutional rights as appears in Slip Op. 6 in Appendix attached hereto. (It should be noted that a Motion In Limine had been filed and denied by the Hearing Officer. Additionally, an objection was duly made at the hearing which was overruled by the Hearing officer. It was noted that all answers by the Petitioner to the line of questioning were subject to an on-going objection.) The Motion to

Reconsider further raised the issue that the findings were not supported by the evidence, that the findings of fact were mixed with issues of law and that the Hearing Officer demonstrated bias and prejudice against the Petitioner as appears in Slip Op. 6 in Appendix attached hereto. The Supreme Court of Indiana denied the Motion for Rehearing as appears in Slip Op. 1 in the Appendix attached hereto.

Reason for Allowance of Writ of Certiorari

The decision of the Supreme Court of Indiana complained of by this Petitioner affects the very heart and substance of the judicial system. It concerns the character and qualifications of persons practicing law in the state courts and, ultimately, their capacity to practice law in the Federal Judicial System.

As supervisor of the members of the Indiana Bar, The Supreme Court of Indiana has decided an important question of federal law which has not been, but should be settled by this Court. It has construed, interpreted, and applied its rules in a manner contrary to the decisions of other state courts of last resort, the United States Courts of Appeals and this Court in the following respects:

1) Disciplined or disbarred attorneys are not disbarred for life, but have the right to seek reinstatement after the end of the term specified in the order or after a reasonable time--usually deemed to be five years. 7A Corpus Juris Secundum 140-143, Attorney and Client Section 122; In re Daniel 173 SE2d 153 (W.Va.); Petition of Seijas, 454

P2d 203 (Wash.); In the Matter of Bennethum III, 278 A2d 831 (Del.).

The Respondents are interpreting and applying Rule 23, Section 4, of the Rules of the Indiana Supreme Court in such a manner that so long as Petitioner tells the whole truth as she knows it to be, she can never be reinstated. To be reinstated, it is necessary that petitioner say something that she has steadfastly and consistently contended is not true. Such a ruling encourages dishonesty and perjury to enter the profession charged with the responsibility of making certain courts can determine the truth. Such is accomplished by honestly and efficiently making full and complete disclosure of facts and in the form of evidence.

2) Rules and procedures are not to be interpreted and/or applied in contravention of due process and equal protection of the law. Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232; Willner v. Committee on Character and Fitness, 373 U.S. 96; Koningsberg v. State Bar of California, 373 U.S. 252. Specifically, Rule 23, Section 4 of the Rules of the Indiana Supreme Court should not be interpreted and/or applied to violate Petitioner's rights, namely:

a) Petitioner has a right to seek and obtain reinstatement to practice law after demonstrating with clear and convincing evidence, she desires to have her privileges to practice law restored, is remorseful, has conducted herself in an exemplary and above reproachful manner after the discipline, has an

understanding of and attitude towards the standards imposed on members of the Bar and will conduct herself in conformity with such standards, can be recommended as a person fit to be consulted about matters of trust and confidence and has not practiced law or done anything contrary to the orders of the court. Rule 23, Section 4, Rules of the Indiana Supreme Court. She should be treated the same as any other petitioner. Koningsberg v. State Bar of California, 353 U.S. 252. "Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause." Schware vs. Board of Bar Examiners of New Mexico, 353 U.S. 232; 249.

b) Petitioner has a right to present evidence and to testify on her own behalf. To continually deny Petitioner her privileges to practice law by labeling her untrustworthy because she testifies she did not do or know about certain acts and/or does not recant such testimony after being twice denied privileges for such testimony and failure to recant, denies her this right contrary to the due process clause of the 14th Amendment, Section 1. Koningsberg v. State Bar of California, 353 U.S. 252. Further, failure to confess to an act does not in and of itself demonstrate bad character as repentance is not required. In re Thomas, 390 NE2d 890, 76 I112d 185; In re Hiss, 33 NE2d 429, 368 Mass 447. To be reinstated, an attorney need not express "contrition" which is

inconsistent with a position to which she honestly and sincerely adheres. In re Barton, 329 A2d 102, 273 Md 377. A requirement that to be reinstated a petitioner must confess intentional misconduct is not proper. Petition of Eddleman, 459 P2d 387, 77 Wash2d 42. "Since not all men are equally guilty and some convicted men are innocent, we think the witness should be allowed either to extenuate his guilt or to assert his innocence of the previous charges.... ...(I)nquiry into a previous crime must be stopped before its logical possibilities are exhausted.... ...(I)nquiry should stop with reasonable protestations of defendant." U.S. v. Boyer, 150 F2d 505. U.S. Court of Appeals, D.C.

The Respondents have done indirectly that which they cannot do directly, namely extend the punishment of the Petitioner beyond the terms originally established. The strategy is to inquire about matters which are res judicata even though the Petitioner contests them, and has consistently contested their relevancy and accuracy. Because of res judicata and equitable estoppel, the Petitioner can not contest their accuracy or legal efficacy. On the other hand, to admit to their factual accuracy constitutes perjury from her point of view. Concomitantly, to question their factual accuracy in subsequent hearings results in Petitioner's being accused of again committing perjury. This is precisely the dilemma the Massachusetts and Michigan Courts, along with other

jurisdictions, were concerned about when they determined confession is not necessary to regain privileges to practice law. To implement this position Michigan felt it was necessary to remove any requirement of remorse from its rules as one of the allegations to be established when applying for reinstatement. The injustice of the process is readily apparent when it is observed that had Petitioner sought reinstatement in Michigan prior to her request in Indiana she would have been reinstated, as the issue of remorse could not have been used as a basis for opening the inquiry as to her admission of past acts. However, because she chose to make the request in Indiana first, Indiana's ruling is now utilized as a basis for denying reinstatement in Michigan.

Clearly, if it were not for the inquiry about past acts and Petitioner's refusal to admit to them, she would be reinstated.

c) Petitioner has a right to notice of proceedings that disbar her and prevent her from seeking an opportunity to practice law for five years. An attorney is entitled to reasonable notice of disciplinary proceedings against him and an opportunity to defend. In re Murray, 362 NE2d 128; 266 Ind 221; In re Ruffalo, 390 U.S. 554; Ex Parte Robinson, 19 Wall (U.S.) 513; Bradley v. Fisher, 13 Wall 335; Ex Parte Bradley, 7 Wall 364; 7A CJS 30-32 Attorney and Client Section 92. At no time prior to the recommendation of the Hearing Officer was the Petitioner advised the proceeding was in the nature of a disbarment that could

result in her being denied an opportunity to reapply for reinstatement for five years. To the contrary, no pleadings were filed by the Disciplinary Commission and no arguments or brief were presented that adopted such a theory.

d) Petitioner has a right to have Respondents sustain a burden of proof that justifies disbarment. No evidence was presented that justifies disbarment resulting in the failure of the Respondents to meet a burden of proof that is "clear and convincing," or even a "preponderance."

e) Petitioner cannot be compelled to testify to incriminate herself and thereby subject to perjury charges as a condition of having her privileges to practice law restored. Fourteenth Amendment, Section 1. It has been

established attorneys have the right to invoke the Fifth Amendment. Spevack v. Klein, 385 U.S. 11. It should be noted that as late as 1973, the Indiana Supreme Court seriously questioned the wisdom of Spevack v. Klein, 385 U.S. 11 by stating, "If the lawyer has no duty to reveal or explain his professional conduct, the enforcement of professional responsibility will be hampered." In Re Stivers, 292 NE2d 804, 808 (Ind.). However, to require she incriminate herself when the petitioner has the burden of proof, defeats her rights to present evidence to demonstrate her entitlement to have her privileges to practice law restored. Such was found to be contrary to the due process and equal protection clauses of the Fourteenth

Amendment in Koningsberg v. State Bar of California, 353 U.S. 252.

Such a position also contravenes the position of numerous courts that a person can apply for reinstatement the second time because the first hearing is not res judicata as to all matters. In re Stephenson, 10 So2d 1, 243 Ala 342; In re Bruener, 34 P3d 437, 178 Wash 165; In re Mitchell, 14 SE2d 77, 123 W Va 283; In re Peters 70 So 648, 198 Ala 67; In re Bennethum, 278 A2d 831, (Del); In re Stump, 114 SW 2d 1094, 272 Ky 393; Burns v. State, Civ App, 76 SW2d 172 (Tenn). Error granted.

f) Petitioner has a right to a hearing before a fair and impartial hearing officer who renders his decision based on the evidence before him. U.S. v. Grinnel Corp., 384 U.S. 563. The

scurrilous statements in the report of the hearing officer, accompanied by his admission of remembrances of events in the distant past which were not detailed, denied the Petitioner an opportunity to examine them for relevancy or to cross examine them for their accuracy and truthfulness. These acts denied her due process of law and constitute evidence of bias and prejudice necessitating his disqualification. A judge should decline to sit if there is personal animosity between him and the attorney. Snyder's Case, 152 A 33, 301 Pa 272.

3) Petitioner was denied an opportunity to raise all of the issues noted above in the proceedings below. Petitioner was not given an opportunity to appear and argue her case prior to the adoption of the Hearing Officer's

findings by the Indiana Disciplinary Commission and The Supreme Court of Indiana.

4) Lastly, the rambling nature of the Hearing Officer's findings in which he confused findings of fact with conclusions of law, renders it impossible to intelligently discern the nature of his findings. It is impossible to determine what evidence was relied upon to support facts and to ascertain if the conclusions of law were supported by the findings of facts. The Order is not supported by the evidence -- all of which was complimentary to the Petitioner and supportive of her request to be reinstated.

This court has demonstrated its interest in upgrading the scholarship and character of the Bar. At no time has it

tolerated sloppy drafting and unlawful procedures that deny due process and equal protection. More importantly, it is important that monitoring of the qualifications and character of members of the Bar be consistent throughout the 51 jurisdictions and conducted in conformity with the United States Constitution.

Respectfully submitted,

Petitioner
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APPENDIX

SLIP OP. 1

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF	)	
	)	Cause No. 772 S 93
NOLA ALLEN	)	

ORDER DENYING MOTION TO RECONSIDER

Comes now Petitioner, Nola Allen, and files her "Motion to Reconsider and to Consider Brief herein Filed." And this Court, being duly advised, now finds that the petition should be denied.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Petition to Reconsider filed this cause is hereby denied.

The Clerk of this Court is directed to forward a copy of this Order to the parties and their attorneys of record.

Done at Indianapolis, Indiana, this 9 day of September, 1986.

/s/ Richard M. Givan
Chief Justice of
Indiana

All Justices concur.

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF	)	
	)	Cause No. 772 S 93
NOLA ALLEN	)	

ORDER DENYING PETITION FOR REINSTATEMENT

Comes now the Indiana Supreme Court Disciplinary Commission and files its Findings of Fact and Recommendation on Petitioner's Second Petition for Reinstatement and its Recommendation that the Petitioner be denied reinstatement.

And this Court, being duly advised, now finds that the Petitioner has failed to meet the requirements of Admission and Discipline Rule 23, Section 4, and that the Commission's recommendation should be approved.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Petitioner, Nola Allen, is denied reinstatement.

The Clerk of this Court is directed to forward a copy of this Order to the parties and their attorneys.

Done at Indianapolis, Indiana this 4th day of June, 1986.

/s/ Richard M. Givan
Chief Justice of
Indiana

All Justices Concur.

SLIP OP. 3

IN THE SUPREME COURT OF
THE STATE OF INDIANA

IN THE MATTER OF	)	
	)	Cause No. 772 S 93
NOLA ARLENE ALLEN	)	
	)	
Petitioner.	)	

SECOND PETITION FOR REINSTATEMENT

Comes now NOLA ARLENE ALLEN, who being duly sworn upon her oath deposes and says:

1. She files this Petition pursuant to Rule 23, Section 4 and 18.

2. She desires in good faith to obtain restoration of her privilege to practice law.

3. The term of suspension prescribed in the order of suspension has elapsed.

4. She has not practiced law in this state or attempted to do so since she was disciplined.

5. She has complied fully with the terms of the order for discipline.

6. Her attitude towards the misconduct for which she was disciplined is one of genuine remorse.

7. Her conduct since the discipline was imposed has been exemplary and above reproach.

8. She has a proper understanding of the attitude towards the standards that are imposed upon members of the bar and will conduct herself in conformity with such standards.

9. She can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence and in general to aid in the

administration of justice as a member of the bar and as an officer of the courts.

10. The discipline was not imposed by reason of physical or mental illness or infirmity, or for use of or addiction to intoxicants or drugs and there is no disability by reason thereof.

WHEREFORE, affiant prays for reinstatement and for all other proper relief.

/s/ Nola Arlene Allen

Subscribed and sworn to before me this 1st day of December, 1983.

/s/ Raymond P. Harris, Jr.
Notary

My commission Expires:
March 12, 1984

Certificate of Service omitted.

SLIP OP. 4

IN THE SUPREME COURT OF
THE STATE OF INDIANA

BEFORE THE SUPREME COURT DISCIPLINARY
COMMISSION

IN RE THE MATTER OF	)	
	)	
NOLA ALLEN,	)	Cause No. 772 S 93
	)	
Petitioner.	)	

FINDINGS OF FACT AND RECOMMENDATIONS TO THE COMMISSION ON THE SECOND PETITION FOR REINSTATEMENT

This matter came on for hearing on the second Petition For Reinstatement on September 27, 1984,[1] and the Hearing

[1] The Petition For Reinstatement was filed December 23, 1983. This Hearing Officer was appointed April 19, 1984. After a pretrial conference, certain discovery took place and the parties exchanged witness lists and document lists by June 13 1984. A Motion In Limine was filed April 25, 1984, which was overruled by letter on September 17, 1984 with the parties given the opportunity for oral argument at the opening of the hearing on September 27, 1984 (which neither party requested at

Officer now makes the findings and recommendations to the Commission.

BACKGROUND

1. Petitioner was suspended for two years. In Re Allen (1973), 260 Ind 528, 297 N.E.2d 429 [hereinafter Allen I]. Subsequently, Petitioner petitioned for reinstatement which Petition was denied on July 31, 1978. In Re Allen (1978), _____ Ind. _____, 379 N.E. 2d 431 [hereinafter Allen II].

the time of the hearing). The hearing was originally scheduled for June 21, 1984 and was cancelled due to the unavailability of this Hearing Officer. At the conclusion of the hearing on September 27, 1984, the Hearing Officer requested briefs and proposed findings which were to be submitted by the Petitioner on October 30, 1984. This Hearing Officer received those findings and a two page memoranda devoid of any discussion of applicable case law on January 5, 1985 and on September 11, 1985, received responsive proposed findings.

2. The initial Petition For Reinstatement was denied in Allen II because Petitioner was found to have committed perjury in the proceeding, to have engaged in the commission of fraud at the original disciplinary hearing and, indeed, was found to have participated in the fabrication of evidence which was presented at the original disciplinary hearing. The Supreme Court in Allen II found that these matters were not at issue in the original disciplinary proceeding, holding:

> "It is apparent, then, that the issue of any fraud practiced upon the first Hearing Officer was not taken into consideration by that Hearing Officer, beyond the fact that the Petitioner had failed in her defense. Neither the findings of the first Hearing Officer, nor the findings of this court based upon any fraud practiced thereon, were based upon any fraud practiced by Petitioner at her original disciplinary proceeding. No discipline was therefore imposed

> upon this Petitioner for those acts, and the present case cannot constitute a second punishment for the same act." (379 N.E.2d at 436, emphasis added.)

The Supreme Court was quite precise in delineating that the initial Petition for Reinstatement was not being denied based on Petitioner's professing innocence of the acts for which she was disciplined in the original disciplinary proceedings. The Court held:

> "Further, the wrong committed by the Petitioner was not in her professing innocence of commission of the act for which she was disciplined and found to be guilty. Compare In re Hiss, (1975) 368 Mass. 447, in attempting to prove her innocence she gave untrue testimony, under oath, before the very tribunal attempting to make the truth and determination of her fitness to be reinstated. See, e.g., In Re Kone (1916) 90 Conn. 440, 97 A. 307." (379 N.E.2d at 436).

3. Of course, if the last sentence quoted above is taken literally and

extrapolated, a petitioner professing innocence in good faith and in all sincerity would have to give untrue testimony under oath in all subsequent reinstatement proceedings. Obviously, this is not the intended result.

4. It would appear that Allen II simply holds that the misconduct of intentional fabrication of physical evidence and the concomitant perjurious testimony was not at issue in the initial proceedings and was not considered by the Hearing Officer therein "beyond the fact that the Petitioner had failed in her defense." (379 N.E.2d at 436) To the extent the denial of the initial Petition for Reinstatement was based on matters which occurred in the initial disciplinary proceedings, the misconduct did not involve matters for which

Petitioner was directly disciplined in Allen II. The denial of the initial Petition for Reinstatement in Allen II was, in fact, new discipline for misconduct not encompassed by the prior proceedings. Hence, the Petitioner's arguments made in Allen II concerning res judicata and being allowed to profess innocence of the matters which originally led to her suspension, were really not at issue; but they are in this second reinstatement proceedings, as will be discussed more fully hereafter.

ELAPSED PERIOD

5. The facial requirements of or issues under Rule 23, Section 4(a) [hereinafter Section 4(a)] in reinstatement proceedings are normally fairly straightforward with the exceptio

of paragraphs (5) through (8).[2] However, in the case at bar, Section 4(a)(2)

[2] "(5) His attitude towards the misconduct for which he was disciplined is one of genuine remorse;

(6) His conduct since the discipline was imposed has been exemplary and above reproach;

(7) He has a proper understanding of and attitude towards the standards that are imposed upon members of the bar and will conduct himself in conformity with such standards;

(8) He can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of truth and confidence, and in general to aid in the administration of justice as a member of the bar and an officer of the Courts;"

represents a problem[3] since the original suspension was for two years, yet the basis of the denial of the initial Petition For Reinstatement involved findings of original acts of misconduct as recited above.

6. Due to the original acts of misconduct in Allen II, the elapsed time to be considered must be from the date of **ALLEN II** -- but what elapsed time, since neither a suspension period nor a disbarment was announced in Allen II? This can only be determined[4] by looking

[3] "(2) The term of suspension prescribed in the order of suspension has elapsed for five (5) years have elapsed since the suspension;"

[4] While this may be an exercise without significance pursuant to Section 4(a)(5) concerning the elapsed time after a suspension or five years for disbarment, since approximately five years had elapsed between Allen II and

at the nature of the misconduct and comparing it to the other Indiana Supreme Court Cases. It would appear that had the misconduct, of which Petitioner was found to have committed on the initial reinstatement proceedings, occurred in a suspension or disbarment context, the Supreme Court would have disbarred the Petitioner. See, In Re Mann (1979), ____ Ind. ____ 385 N.E. 2d 1139, - ____ Ind. ____, and In Re Moore (1983), ____ Ind. ____, 453 N.E. 2d 971. Hence five years must have elapsed since Allen II, which it has.

NATURE AND SERIOUSNESS OF MISCONDUCT

> the filing of the second Petition For Reinstatement, it does have the significance to the question of rehabilitation where the nature and seriousness of the misconduct must be considered.

7. Returning to the requirements of Section 4(a)(5)-(8), these requirements would seem to entail at least the issues of repentance and rehabilitation. The requirement of rehabilitation was expressed in Allen II as:

> "When a person has been found wanting in meeting these responsibilities [Ind. R. Adm. & Dis. 23, Section 1] and has been suspended or disbarred, then the burden falls on that person to show that his or her character and attitude has been rehabilitated to the standards required under [Rule 23, Section 4]." [Emphasis added.]

The Indiana Supreme Court has not clearly delineated the nature of the inquiry or the matters which must demonstrate "rehabilitation of character and attitude" to the extent required under Section 4. In looking to cases from other jurisdictions, not all have adopted

the same rule, but generally the similar considerations seem to be at place in each jurisdiction, which, of course, may vary depending on the particular facts of a case, e.g., restitution may be involved in a particular case. In regard to rehabilitation, the Supreme Court of Massachusetts in Hiss, supra,[5] held as follows:

> "In judging whether a Petitioner satisfies these standards and has demonstrated the requisite rehabilitation since disbarment, it is

[5] It should be noted that rule in Massachusetts at the time apparently did not require repentance as a factor involved in reinstatement:

> "The legal standard for reinstatement to the bar is set forth in S.J.C. Rule 4.01, Section 18(4)... there is no mention of repentance as a prerequisite to admission..." [333 N.E.2d at 436].

> necessary to look to (1) the nature of the original offense for which the Petitioner was disbarred, (2) the Petitioner's character, maturity, and experience at the time of his disbarment, (3) the Petitioner's occupations and conduct at the time since his disbarment, (4) the time elapsed since disbarment, and (5) the Petitioner's present competence and legal skills. [Citations omitted.]

See also, State v. Russo (1981), ___ Kan. ___, 630 P.2d 711, 714-15 and 70 A.L.R.2d 268. (Sic)

8. As previously indicated, in considering the nature and seriousness of the misconduct in the case at bar, there are special considerations since in Allen II the Court did not explicitly set forth the nature and extent of any further suspension or disbarment based on the original misconduct found, but merely

denied Petition For Reinstatement. However, it would appear that the nature and seriousness of the misconduct found in Allen II would have warranted disbarment [see Finding No. 6, supra, and n.6, infra.]

9. In regard to the factor of the nature and seriousness of the misconduct, there appear to be some offenses or misconduct which are considered so serious that courts have refused reinstatement based on this factor alone, without a categorical statement that reinstatement would never be granted, and without accepting and, in fact, denying the proposition that there is misconduct which would forever bar an attorney from reinstatement. See Bonner v. Disciplinary Board of Alabama (1981) ___ Ala. ___, 401 So.2d 734, 738. Situations

involving the corruption of the legal system have led to such results. See In Re Keenan (1943), 314 Mass. 544, 50 N.E.2d 785; In Re Endsley (1978), 241 Ga. 394, 245 S.E.2d 657, In Re Raimondi (1979), 285 M.D. 607, 403 A.2d 1234; In Re Simpson (Mo. 1959), 322 S.W.2d 808; In Re Brown (1981), ___ W.Va. ___, 373 S.E.2d 567. Hence, whether the Indiana Supreme Court based on the misconduct found in Allen II would have suspended, as opposed to disbarred becomes a rather important issue.[6]

[6] To the extent that the case at bar involved a suspension as opposed to original misconduct or reinstatement, a suspension would imply that a disbarment had been rejected and this issue [that is, whether the nature and seriousness of the misconduct is such that reinstatement should be denied] would not be present. In other words, if the Supreme Court suspends as opposed to disbars a petitioner, presumably the Court has reviewed the nature and seriousness of the misconduct and this issue would seem

10. However, there are no reported Indiana cases concerning whether there can be such misconduct (similar to holdings in other jurisdictions) which is so serious as to cause reinstatement to be denied. The misconduct in Allen II is strikingly similar to that which some courts have found to be so serious as to require a denial of reinstatement without further consideration. Perjury and fabrication of evidence are the anathema to our judicial system and indeed our system of self-government, cutting to its very foundation, matters which attorneys

to be precluded on reinstatement. It would seem logical that if a suspension were given, then the seriousness of the misconduct would not be such as to be within the case law discussed in Finding No. 6, while after disbarment, the issue remains open since any disbarred attorney can apply for reinstatement after five years, regardless of the nature and seriousness of the misconduct.

as officers of the courts cannot allow to concur, much less originate. Whatever may be the case, the recommendation in the case at bar does not rest solely on this consideration, but the nature and seriousness of the misconduct found in Allen II bears in the result.

REMORSE - INNOCENCE

11. As a part of the question of rehabilitation and aside from the various factors previously enumerated, there is the question of "repentance," or as set forth on the fact of Section 4(a)(5)--whether a Petitioner has an attitude toward the misconduct of genuine remorse.[7] When innocence is proclaimed, this issue becomes more complex.

[7] Some courts apparently differentiate rehabilitation from remorse. See In Re Wigoda (1979), 77 Ill.2d 155, 395 N.E.2d 571, 573-74; In Re Hiss, supra, and n.5, supra.

12. The issue of remorse or repentance versus innocence is basically one of the underlying bases (while not clearly advanced as such) for the Motion In Limine and several objections made at the hearing. Petitioner filed a Motion In Limine as to "the consideration of Petitioner's testimony and its credibility by the original Hearing Officer in [Allen II] and that the Motion In Limine extend to the consideration of Petitioner's testimony and its credibility by the second Hearing Officer in 1976-1977." The sole ground to support the Motion was the assertion of res judicata due to Allen I and II. This Motion In Limine was overruled. The evidentiary issue which was probably at the base of the Motion In Limine,

although not stated as such, also arose during the hearing.[8]

13. Petitioner on direct examination testified that she was remorseful about

[8] The petitioner objected to the offer of the transcript of the prior proceedings and the objections were overruled. However, the transcript itself was not physically present so it was admitted with the stipulation that if either of the parties were to rely upon matters within the transcript, they would have to cite to the same in their post-hearing briefs since this Hearing Officer was not going to review the transcript in the absence of such citations. neither party has so cited, or for that matter, cited to much of anything. However, this Hearing Officer was a member of the Commission at the time of the last reinstatement proceeding and does recall having reviewed the transcript at that time in the course of affirming the original Hearing Officer's findings in Allen II. In any event, if there were portions of the transcript this Hearing Officer may have read or which may have impacted the present decision, these are fully reflected in published decision of the Supreme Court in Allen II. Once again, since the nature and seriousness of the misconduct reinstatement proceedings must now be considered, this issue is largely, if not wholly, irrelevant.

the initial discipline and toward the misconduct found at the time of the denial of the first Petition For Reinstatement, as well as for whatever happened during the course of those proceedings, that she genuinely was remorseful for whatever was said or done during the course of those proceedings and that she accepted full responsibility for those matters. More particularly, with respect to the conduct for which she was found guilty under Count VI of the original Complaint concerning the non-payment of inheritance tax and its involvement in the examination that she had genuine remorse for her "role" in that regard. Again, as in the initial reinstatement proceedings, Petitioner was cross-examined as to the nature of her remorse, acceptance of responsibility,

and precisely for what the remorse and responsibility was. Counsel for Petitioner objected several times. These objections, as was the Motion In Limine, seemed to be based on some concept of res judicata (that is, issue preclusion), and that somehow matters which have gone on heretofore in the various Allen proceedings cannot be considered, presumably because Petitioner was going to maintain her innocence of the misconduct found in Allen II. Over these objections, Petitioner initially testified that she could neither admit nor deny what was found in the initial reinstatement proceedings, but elsewhere she seemed to affirm that she had no knowledge of and did not participate in the fabrication of evidence as found in the first reinstatement proceedings.

* * *

CONDUCT AFTER ALLEN II

19. Returning to other elements of rehabilitation, particularly Petitioner's conduct since Allen II, at the time of denial of the initial Petition For Reinstatement, Petitioner was an assistant professor at the University of South Alabama, Mobile, Alabama. Subsequently, in 1979 she became an associate professor at the University of South Florida, Tampa, Florida, where she continued to be so employed up to the time of the hearing herein. In 1980, she received a Ph.D. in political science from the University of Notre Dame. In 1982, Petitioner was a visiting lecturer at Stetson Law School, St. Petersburg, Florida where she lectured on the Fourth, Fifth, and Sixth Amendments in criminal

procedure course. At the University of South Alabama, Petitioner taught courses in constitutional law, evidence, criminal law, criminal procedure, arrests, search and seizure and other courses concerning rights of juveniles, adults, felons and mentally ill, as well as a judicial process course. Some law students would take the courses. Also, at the University of South Florida, Petitioner taught similar courses in the Criminal Justice Department and law students from Stetson would take her graduate courses and receive credit for them at Stetson.

20. Petitioner did not disclose her suspension or reinstatement to the officials at Stetson University, University of South Alabama, or University of South Florida.

21. Initially, Petitioner's position as an associate professor at the University of South Florida was in the Criminal Justice Department. When Petitioner's disciplinary history appeared in a Tampa newspaper, Petitioner had problems concerning tenure and a faculty hearing was proposed as to her status with the Bar, in which hearing, Petitioner refused to participate. Ultimately, Petitioner was transferred from Criminal Justice to African/Afro-American study.

22. Petitioner testified that she did not intend to reside or practice law in Indiana if reinstated, as Petitioner apparently desires to practice law in Florida or teach at a law school where in either event (by her own testimony) it

would be required for her to be reinstated to the Bar of Indiana.

* * *

23. Petitioner testified that Exhibit 2 was submitted in support of her application for tenure at the University of South Florida. An examination of Exhibit 2 reveals that Petitioner basically set forth her achievements in part as follows:

UNIVERSITY OF SOUTH FLORIDA
TAMPA CAMPUS
FACULTY DATA FORM

ACADEMIC YEAR 1983/84

This form contains data required by the Board of Regents. These data will be used by USF personnel, including deans, chairpersons, and USF faculty involved in peer evaluation pertaining to recommendations for tenure and/or promotion; therefore, it is in the best interests of each faculty member to be certain that the data are as complete and accurate as possible. Please attach additional sheets, if necessary, to give complete information. Please submit an

original and one copy, the latter of which will be returned to the appropriate dean's office. Original signatures are required on only the original copy of this form which will become part of the faculty member's permanent university file.

FOR EQUAL EMPLOYMENT OPPORTUNITY INFORMATION ONLY:

NAME Nola Allen

SEX Female RACE Black

DATE OF BIRTH April 23, 1922

COLLEGE/DEPARTMENT Social & Behavioral Sciences, Department of Criminal Justice

Please attach this page to the original copy of the Faculty Data Form only.

UNIVERSITY OF SOUTH FLORIDA
Faculty Data Form

ACADEMIC YEAR 1983/84

PART I - GENERAL DATA (To be furnished by the candidate)

NAME Nola Allen

SOCIAL SECURITY NUMBER 317-30-7266

Initial Date of USF Employment/
Rank 1979 - Associate Professor

Present Rank (eff. date) Associate Professor - 1979 Tenured (eff. date)

Department/Program & College Criminal Justice - College of Social & Behavioral Sciences

Education:

Institution	Field of Study	Degree	Date
U. of Mich.	Pre-Law	B.A.	1953
U. of Mich.	Law	J.D.	1954
Notre Dame Univ.	Pol.Sci.	M.A.	1975
Notre Dame Univ.	Pol.Sci.	Ph.D.	1980
U. of South Florida	Business	M.B.A.	1982

Other Education (institutes, short courses, etc.) 1960 -1965 - Butler University - 30 graduate hours in economics
1973-1974 - University of Minnesota - 27 graduate hours in political science

Employment (Chronological, list current position first including military service. All changes in position or title at a given institution should also be shown.)

Place	Position/ Title	Time Period
U. of S. Florida	Assoc.Prof.	1979-Pres.
Hillsborough Comm. College	Adjunct Professor	1983-Pres.
Stetson Law School	Adjunct Professor	1982
U. of South Alabama	Assistant Professor	1977-1979
St. Mary's College	Lecturer	1975-1977
Notre Dame University	Graduate	1974-1977
Gen. Assistance Center of Indiana U.	Coordinator Consultant	1973-1974
Indianapolis, Indiana	Attorney	1954-1973
Marion Circuit Court, Indiana	Judge Pro Tropore	1965-1971

Other Professional or Related Activities
See 2-A attached

Areas of Specialization
Constitutional law, courts, plea bargaining, court delay, juvenile delinquency -- desistance

Honors, Awards, Biographies Black Emphasis/Human Development Award for Outstanding Service as a Black Educator- 1983; Danforth Associate - 1979 to present

Professional Organizations and Offices See 2-A attached

Major Civic and Public Service Activities Tampa Urban League Guild; Leadership Florida

University, College, departmental, or CYST Councils or Committees See 2-A attached

2-A

Other Professional or Related Activities

Special Assistant to the County Administrator
Consultant to Tom Purvis, Sheriff of Mobile County, Alabama
Legal Counsel to the Executive Director of the Metro. Planning Commission
Legal Counsel to the Speaker of the House of the Indiana State Legislature
Assistant Minority and Majority Attorney to the House of the Indiana State Legislature

24. On a cursory reading of the foregoing, it would appear that Petitioner practiced law in the State of

Indiana for 19 years which also encompassed being counsel to various House and Senate Leaders and a pro tem judge of the Marion Circuit Court and the Petitioner went into teaching, all creating the scenario of a practitioner at law becoming well-grounded and schooled in the practicalities of law and government, and ultimately turning with beneficent and altruistic purposes to teaching. One can only wonder what the applications to the various universities set forth where, by her own admission, Petitioner did not disclose her suspension or reinstatement denial. These are but half truths, if not in the overall context, total misstatements of the truth, for as set forth above, Petitioner's turning to teaching was the result of her having been found to have

committed perjury and being a participant in, if not perpetrator of, fabrication of evidence and its admission into the legal proceedings. It is little wonder that the publications in the Tampa newspaper at or about this period of time caused Petitioner some difficulty in obtaining tenure in the Criminal Justice Department at the University of South Florida. Indeed, indicative of Petitioner's inability to accept the responsibility for a consequence of her own actions was the assertion in this proceeding that somehow, not having had the second reinstatement proceedings cleared up before her tenure application was heard, caused her tenure problems.

25. Whatever may be the propriety, advisability, wisdom or other consideration concerning a suspended

attorney (not to mention one found to have committed perjury and to have participated in the fabrication of physical evidence personally sponsored in legal proceedings) teaching at a law school or even in the area of criminal justice in a non-law school setting, these issues could not be raised, discussed or resolved without a disclosure by petitioner. This type of conduct, which is at best misapprehension and repression or at worst fraud or other intentional connivance, is fraught of the same threads which are woven throughout the previous proceedings.

26. Over the time since Allen II, Petitioner has achieved several advanced degrees and has pursued a teaching career, from all of which many inferences can be drawn. On doubt, achieving a

Ph.D. and teaching at several universities, including at the graduate level in a law school, demonstrate strong intellectual capacity, as well as the capability to maintain the confidence of students and administrators. However, Petitioner had much the same capability prior to Allen II. The character traits required of an attorney dealing in a fiduciary capacity with clients, not to mention clients' funds, as well as assisting as an officer of courts in the functioning of the judicial system, go far beyond intellectual capacity. In this regard, titles, intellectual capacity and the extent of one's achievements are but the beginning. As has been demonstrated increasingly over the last decade, character flaws or defects leading to perjury, bribery and

misuse of our legal system are not limited or confined to any socio-economic, intellectual group or status. Certainly, more is required of attorneys than in many other walks of life. Assessment of rehabilitation in terms of character and attitude which led to the original misconduct is to a large extent a subjective analysis based on the factors set forth heretofore in these findings. This is particularly so in the case at bar where the only evidence presented was Petitioner's testimony, as well as certain unverified (except by Petitioner's sponsorship) or uncross--examined documentary evidence.

CONCLUSION

27. In view of the previous proceedings, the nature and seriousness of the misconduct found in Allen II,

Petitioner's lack of credibility therein, the effect of such findings on Petitioner's credibility herein, Petitioner's demeanor and equivocation in this hearing and its effect on Petitioner's credibility, and Petitioner's conduct since Allen II, there is no clear convincing evidence to support the requirements of Rule 23, Section 4(a)(5), (6), (7) and (8). In fact, the evidence is clear and convincing to the contrary. The same character traits which led to the Petitioner's suspension and previous denial of reinstatement seem to be very much alive and would merely resurface in the same or another form were she reinstated.

IT IS THEREFORE RECOMMENDED that the

second Petition For Reinstatement be denied.

/s/ G. Daniel Kelly, Jr.
Hearing Officer

Dated: 2/14/86

Certificate of Service Omitted.

SLIP OP. 5

IN THE SUPREME COURT OF
THE STATE OF INDIANA

BEFORE THE SUPREME COURT DISCIPLINARY
COMMISSION

IN RE THE MATTER OF	)	
	)	CAUSE NO. 772-S-93
NOLA ALLEN,	)	
	)	
Petitioner.	)	

RECOMMENDATION UPON PETITION
FOR REINSTATEMENT

The Disciplinary Commission having considered the Findings of Fact and Recommendations To The Commission On The Second Petition For Reinstatement of its Hearing Officer heretofore appointed by this Court, and being duly advised in the premises, now unanimously adopts the findings and recommendations of its Hearing Officer in the following words and figures, to wit:

It is therefore recommended to the Court that the Petitioner be denied reinstatement in accordance with this recommendation and the findings and recommendations of its Hearing Officer, attached hereto and made a part hereof.

/s/ Wesley W. Ratliff, Jr.
Acting Chairman
Indiana Supreme Court
Disciplinary Commission

DATED: February 18, 1986

SLIP OP. 6

IN THE SUPREME COURT OF INDIANA

IN THE MATTER OF)
) CAUSE NO. 772 S 93
NOLA ALLEN)

MOTION TO RECONSIDER
AND TO CONSIDER BRIEF HEREIN FILED

Comes now the respondent, Nola Allen, by counsel, and respectfully requests the Court to reconsider its Order Denying Petition for Reinstatement issued by this Court on June 4, 1986, and to consider the brief of respondent herein filed and in support thereof would show the Court as follows:

PETITIONER'S RESPONSE TO COMMISSION'S RECOMMENDATION AND PETITIONER'S MEMORANDUM OF LAW AND FACTS IN SUPPORT OF PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW

Comes now the petitioner, Nola Allen,

by counsel, and respectfully submits her combined memorandums in response to the Supreme Court Disciplinary Commission's recommendation to the Court that the petitioner be denied reinstatement, along with her memorandum in support of Petition for Reinstatement.

Petitioner would represent to the Court that the facts, laws, and equities lie with the petitioner and, therefore, she should be reinstated and permitted to practice law in the State of Indiana. She submits the following facts and conclusions in favor of said reinstatement, more specifically as follows:

1. The findings of fact as submitted by the Commission are not controlling and should be disregarded in that most of said findings are based upon subjective

speculation and conjecture and not the evidence of record.

Article F, Section 4, of the Indiana Constitution grants to this Court original jurisdiction as to the admission and discipline of attorneys. Pursuant to this authority, rules for admission and discipline of attorneys have been promulgated which establish the procedural format of a disciplinary proceeding. Under this established format, a Hearing Officer receives evidence and may make a recommendation to this Court; however, this being an original action, the Supreme Court itself must determine the issues of fact. In Re Pawlowski (1959) ____ Ind. ____, N.E.2d 595. The ultimate findings of fact are arrived at through an examination of all

matters before the Court, including the transcript, and, while the findings of the Hearing Officer may be considered, they are not controlling. In Re Wireman (1977) ____ Ind. ____, 367 N.E.2d 1368 and In Re Murray (1977) ____ Ind. ____, 362 N.E.2d 128.

A review and analysis of the Commission's "facts" reveals that they are not objective recitals of the record as contained in the transcript, but rather each is presented with a distinct and unmistakable adversary tone. The Commission has not presented facts to this Court, but rather has submitted its own inferences and totally subjective impression. Findings 13, 14, 17 and 24 each clearly illustrate the complete lack of objectivity that permeates each of the Commission's findings.

(a) Findings 13 and 14:

An analysis of the Commission's findings in Sections 13 and 14 reveals that each is not a finding of fact, but rather a conclusion of law. This is not for the Commission to determine, but for the Indiana Supreme Court. Moreover, the Commission in the two findings hereinabove set forth attempts to punish the petitioner because her legal counsel interposed objections to certain questions propounded during the reinstatement hearing. The Commission has, therefore, sought to suggest that because petitioner's counsel interposed objections the petitioner was in some way attempting to avoid telling the truth. In some manner,

24) There are no facts to support the speculative conclusion that petitioner created such a scenario or ever held herself out to be anything other than a person in need of a job, well qualified for that job. Finally, she is presently employed at the University, though it is unknown how long she can continue to hold that employment. This is so, not because of any fraud practiced upon the University, but the inferences supplied by the Commission's finding in this regard.

Further, the Commission suggests to the Court that when the petitioner's disciplinary history appeared in a Tampa newspaper the petitioner had problems concerning tenure. The fact that the petitioner had "problems" becoming tenured does not in any way support the

accomplishments over a substantial period of her life. The fact that she did not disclose her suspension to her prospective employers does not support a finding, as made by the Commission, that the petitioner attempted to perpetrate a fraud or to indicate to the employers that she was in fact a practicing attorney. Again, this is subjective with the Commission and there is no evidence to support its conclusion in this regard.

The fraud that the Commission accuses the petitioner of perpetrating is "creating the scenario of a practitioner... turning with beneficent and altruistic purposes to teaching." The finding goes on to indicate that the petitioner's turning to teachiing was a result of her having been found to have committed perjury. (Commission's Finding

of South Florida. The petitioner truthfully lists her life's accomplishments and achievements; nowhere in the application does it call for the petitioner to recite the negatives of her life, any more than any other application ever requires for this to be done. All employment applications are designed to allow an applicant the opportunity to present to the employer those reasons that support employment, e.g. age, experience, education, training, and salary requirements. The instant petitioner, at the time of processing the application, had over nineteen years of experience as a legal practitioner. In fact, the majority of her adult life was spent in service to the bar and the law community. Surely this Court can find no fault in petitioner's listing those

of a petitioner at law becoming well grounded and schooled in the practicalities of law and government, and ultimately turning with beneficent and altruistic purposes to teaching." (Finding 24, at page 17.)

There are no facts in existence which would prove or even support the Commission's indictment in this matter. What facts support the conclusion that the petitioner told her perspective employers that she was turning to teaching for "beneficent and altruistic purposes"? You may search this transcript without finding such facts as would support the Commission's conclusion in this regard, none exist.

The exhibits from which the Commission draws its inferences is the petitioner's application for tenure at the University

With respect, petitioner asserts that the Commissioner cannot make findings of fact where it is "quite unclear" as to those facts.

Your petitioner, at the second hearing, testified in clear and unambiguous language that she was remorseful regarding her conduct in the initial disciplinary proceedings and at the first hearing for reinstatement. The record is clear, not unclear, and petitioner submits that the Commission's confusion on the point is covered by the Commission's complete lack of objectivity with regard to the instant petition.

(c) Finding 24:

In this finding, the Commission again demonstrated its complete lack of objectivity where it accuses the petitioner of "creating the scenario

This finding again is an example of the wholly subjective character of the Commission's findings. Please consider that in regard to the petitioner's testimony in the case at bar, the Hearing Officer is quite uncertain whether the petitioner was proclaiming her innocence as to the misconduct. (See Commission's Finding 17, at page 12.) However, please note that the Commission goes on to say that "if petitioner did assert her innocence, it was not in good faith or sincere." (Commission's Finding 17, at page 12.) At first the Commission concedes that it is unclear as to the petitioner's testimony; however, the Commission concludes that if the petitioner asserted her innocence it was not in good faith and sincere.

the facts that must be drawn out of Findings 13 and 14 are simply these:

> "Petitioner on direct examination testified that she was remorseful about the initial discipline and toward the misconduct found at the time of the denial of the first Petition for Reinstatement, as well as for whatever happened during the course of these proceedings, that she genuinely was remorseful for whatever was said or done during the course of those proceedings and that she accepted full responsibility for those matters." (Commission's Finding 13)

Petitioner, therefore, submits that the remaining portion of Finding 13 and all of Finding 14 should be disregarded by this Court in that said portions are nothing more than attempts to criticize petitioner's trial strategy.

(b) Finding 17:

Commission's finding of fraud. In fact, the record in this case is silent as to any such facts to substantiate that conclusion.

The findings of fact as submitted are, as heretofore stated, speculative, suggestive and argumentative and, therefore, should be disregarded.

2. The petitioner should be reinstated to the practice of law in the State of Indiana in that she has fully and completely satisfied each of the Court's requirements under Rule 23, Section 4(a).

The petitioner acknowledges that as a sanctioned attorney she now has the burden of proving that her character and attitude has been rehabilitated to the standards required by this Court.

(Citing Rule 23, Section 4) Petitioner submits that each of the following facts demonstrate that she is and has been sufficiently rehabilitated so as to permit her to practice her profession. These facts are as follows:

(a) The petitioner has been suspended from the practice of law for in excess of thirteen years. In the initial suspension, it was recommended that she be suspended for a period of eighteen months; the Court imposed a twenty-four month suspension. Thereafter, and in 1978, she was denied her Petition for Reinstatement, constituting new discipline for what the Court found to be perjurous testimony at the initial disciplinary proceeding. The Court did not set a

specific period of suspension for the new acts of misconduct, but rather simply denied her Petition for Reinstatement. Had the Court imposed its most severe sanction on the petitioner, i.e. disbarment, she would have had to wait five years before she could reapply. More than five years have elapsed since the Court's decision of 1978 and certainly she is eligible for reconsideration by the Court in this proceeding.

(b) The recorded facts from the transcript demonstrate and prove that the petitioner's attitude toward the misconduct for which she was discipliend was one of genuine remorse.

In one of the findings, Finding

13, of the current Commission recommendation, it said that:

> "Petitioner on direct examination testified that she was remorseful about the initial discipline and toward the misconduct found at the time of the denial of the first Petition for Reinstatement, as well as for whatever happened during the course of those proceedings that she genuinely was remorseful for whatever was said or done during the course of those proceedings and that she accepted full responsibility for those matters."

This clearly demonstrates the remorse which is deemed to be necessary as a condition of the reinstatement.

(c) Since 1978 the petitioner's conduct has been exemplary and she has demonstrated a continuing competency, both in her professional and her business life.

Over the period of time since this Court denied her Petition for Reinstatement in 1978, she has distinguished herself by gaining several advanced degrees, specifically a doctorate degree conferred by Notre Dame University in 1980 in the law related field of politial science and a masters in business administration conferred by the University of South Florida in 1982. She has taught at several universities, including graduate level. She has demonstrated, even to the Commission, a strong intellectual capacity and a continued competency in the law. These should not be overlooked by this Court.

(d) The petitioner's conduct since 1978 also demonstrates rehabilitation and that the petitioner

possesses the moral integrity required by this Court of its attorneys. When she was denied readmission in 1978, the contention was that she had committed perjury; the new discipline enforced at that time was, therefore, one of moral turpitude in engaging in conduct that adversely reflected on her fitness to practice law. However, since that time she has been a model citizen and has conducted her professional and private life in an honest , legal, and moral manner. What better facts could be shown to prove rehabilitation than those which she has done, those which were before the Commission, and those which are now before the Court? As a university professor, she has been trusted with the privilege of educating this

country's future leaders; she has taken her life's knowledge and shared it with others to their benefit, not only through her teaching but through her writing as well. How can one then say that she does not now possess the moral fibre this Court mandates along with the ethical character required of an attorney? She is now abundantly ready to accept the challenge of the practice of law.

CONCLUSION

Petitioner, for each and all of the reasons hereinabove stated, respectfully requests the Court to make a definitive ruling. If the Court has no intention of ever letting her practice law again, then the Court should say that because this has been the practical effect of what has happened. A two year suspension has

turned into a thirteen+ year suspension and, if she is not not eligible to be reinstated, she never will be eligible to be reinstated. If the Court requires remorse, the record is abundant with remorse. If the Court requires rehabilitation, the record is redundant with evidence of that rehabilitation. She has demonstrated through her actions and her conduct all of the requirements as provided for by the rules of this Court and she should be reinstated to the status of attorney, with all privileges appertaining thereto.

Respectfully submitted,

BUTLER, BROWN & BLYTHE

By /s/
Duge Butler, Jr.,
Attorney for Petitioner

Certificate of Service Omitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of December, 1986, three copies of the foregoing Petition for Writ of Certiorari to The Supreme Court of Indiana and Affidavit of Mailing were served on The Supreme Court of Indiana by mailing the same by First Class United States Mail, Postage Prepaid, to the Chief Justice, State House, Indianapolis, Indiana 46204, to The Indiana Disciplinary Commission by mailing to David B. Hughes, Trial Counsel, Indiana Supreme Court Disciplinary Commission, 814 ISTA Building, 150 W. Market St., Indianapolis, Indiana 46204 and to G. Daniel Kelly, Hearing Officer, The Indiana Disciplinary Commission, 814 ISTA

Building, 150 W. Market St.,
Indianapolis, Indiana 46204.

Nola Allen
NOLA ALLEN